

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABRAHAM MIRMAN and JADECO HOLDINGS,
LLC,

Plaintiffs,
-against-

MEMORANDUM & ORDER
10-CV-3000(JS)(ARL)

JOHN DAVID COMEAU, JOSEPH GOURLAY,
and MAGDY WILLIAM GAYED,

Defendants.

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APPEARANCES

For Plaintiffs: Robert Marc Bursky, Esq.
68 South Service Road, Suite 100
Melville, NY 11747

For Defendants:
John David Comeau John David Comeau, pro se
10265 Heritage Bay Blvd., Unit 622
Naples, FL 34120

Joseph Gourlay Joseph Gourlay, pro se
11703 NE 37th Place
Sunrise, FL 33351

Magdy William Gayed Magdy William Gayed, pro se
777 South Jones Blvd. #2308
Las Vegas, NV 89139

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge Arlene R. Lindsay's Report and Recommendation ("R&R") recommending that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. For the following reasons, the Court ADOPTS Judge Lindsay's R&R in its entirety.

BACKGROUND

Plaintiffs Abraham Mirman and Jadeco Holdings LLC (collectively "Plaintiffs") commenced this action in New York State Supreme Court, Suffolk County, against Defendants John David Comeau, Joseph Gourlay, and Magdy William Gayed (collectively "Defendants") for breach of contract, breach of the implied covenant of good faith, and unjust enrichment. Defendants removed the case to this Court and, on July 7, 2010, moved to dismiss the Complaint. The Court denied the motion to dismiss and, on January 4, 2012, directed the parties to contact Judge Lindsay to schedule an initial conference. The parties never did. Nonetheless, on July 12, 2012, Judge Lindsay issued a proposed scheduling order and scheduled a conference for August 1, 2012.

On July 20, 2012, counsel for Plaintiffs filed a motion to withdraw as counsel, and Judge Lindsay adjourned the initial conference to September 5, 2012. On August 20, 2012, this Court granted the motion to withdraw and noted the appearance of Robert Marc Bursky, Esq. on behalf of Plaintiffs. Mr. Bursky is Plaintiffs' current lawyer. Mr. Bursky, however, failed to appear for the initial conference before Judge Lindsay on September 5. Judge Lindsay rescheduled the conference for October 3, 2012 and warned Plaintiffs that failure to appear would result in a recommendation that this action be dismissed

for failure to prosecute. Notwithstanding Judge Lindsay's warning, no one appeared on behalf of Plaintiffs at the October 3 conference.¹

Thus, on October 5, 2012, Judge Lindsay issued the pending R&R recommending that Plaintiffs' Complaint be dismissed for failure to prosecute.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Here, no party has objected to Judge Lindsay's R&R. And the Court finds her R&R to be correct and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

CONCLUSION

Judge Lindsay's R&R is ADOPTED in its entirety, and Plaintiffs' Complaint is hereby DISMISSED WITH PREJUDICE for failure to prosecute. The Clerk of the Court is directed to

¹ The Court notes that all three Defendants traveled from out-of-state for this conference.

mark this matter closed and to enter judgment in favor of Defendants. The Clerk of the Court is further directed to mail a copy of this Memorandum and Order to the pro se Defendants.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: December 4, 2012
Central Islip, NY